IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 56 OF 2005

State of Goa ... Appellant

versus

1. Shrikant Parshuram Audi,
   H.No.393, Shanti Nagar,
   Aquem, Baixo,
   Salcete-Goa.

2. Smt. Surekha @ Rekha
   Parshuram Audi,
   H. No. 393, Shanti Nagar,
   Aquem, Baixo,
   Salcete-Goa. ... Respondents

Ms. Winnie Coutinho, Public Prosecutor for the Appellant.

Mr. V. R. Tamba, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 22ND MARCH, 2007.

ORAL JUDGMENT

This is a State's appeal against the acquittal of the accused under Sections 3(1)(x) of the Schedule Castes and the Schedule Tribes Prevention of Atrocities Act, 1989 and Sections 504, 323 r/w 34 I.P.C.

2. The case against the accused was investigated by Dy.S.P. Gaonkar/PW9 after a complaint was filed by Suchitra Mazgaonkar/PW2 . It appears that the family of Suchitra/PW2 and the accused are neighbours and if Suchitra/PW2 and her family have been residing at Aquem Baixo for about 29 years, the accused came to reside in their neighbourhood, about 6 years prior to the incident. The family of Suchitra/PW2 belongs to Chambar caste which is a Schedule caste while the accused are Brahmins. The houses in which the family of Suchitra/PW2 and the accused reside are separated by a road of about 8 meters width. The incident took place on 13-4-2003 at about 7.30 a.m. when Mahadev Mazgaonkar/PW1 was on the first floor of his house while Shrikant Audi/A-1 was outside his house in their compound while Suchitra/PW2 was in their own compound

plucking flowers. As per the complaint filed by Suchitra/PW2, Shrikant Audi/A-1 was jealous as her family were well employed and therefore was abusing them calling “Chamarin cheddi” over a year but they did not file a complaint. According to her, when she was plucking flowers within her compound wall Shrikant Audi/A-1 as usual started calling “Chamarin cheddi fullam kadta, dev korta” and started singing “Vitola tum ghora kumbar amchea mukar ravta Mazgaonkar chambar Jana Gana Mana Adi Nayaka Jaye he Chambarin muntta” etc. and started abusing her with filthy language in public view in presence of Shiuram K. Dessai/PW5, one Purohit and other neighbours, etc.

3. To prove the charge against the accused, prosecution examined as many as 9 witnesses which included the complainant Suchitra/PW2, her husband Mahadev/PW1, their son Milind/PW3, their tenant Shiuram/PW5 and their neighbour Shusila/PW6 who was declared hostile and cross-examined by the prosecution. Shailesh/PW4 was the panch witness. Dr. Afonso/PW7 was examined to prove the injury on Milind and P.I. Govekar/PW8 is the Officer who recorded the complaint of Suchitra/PW2.

4. The learned Special Judge appointed under the provisions of the Schedule Caste and Schedule Tribes Act, 1989 after assessing the evidence produced on behalf of the prosecution has chosen to give benefit of doubt to both the accused and acquit them for the offences mentioned herein above.

5. The case of the prosecution could be looked at in three aspects.

6. The first is regarding the strained relationship between both the families. As per Mahadev/PW1, the relations between both the families were good and they even used to take light and water from them. Shrikant/A-1 used to visit them and was taking tea at their house. The relations got strained, as per Mahadev/PW1, ever since the accused came to know that they were Chambar by caste. According to the accused the relations got strained because Shrikant/A-1 started demanding the commission which Mahadev/PW1 had to pay to him. The version

of Mahadev/PW1 on this score is difficult to be accepted. It would not have been very difficult for the accused to have come to know when they came to reside in the locality that the family of Suchitra/PW2 belonged to Chambar caste. Shiuram/PW5 who is their tenant has stated that he knew that the family of Suchitra/PW2 were Chambar by caste right from the beginning and the accused also knew the same right from the beginning and if that is so it is difficult to accept that the family of the accused did not know that the family of Suchitra/PW2 belonged to Chambar caste. In other words, Shiuram/PW5 falsifies the version of Mahadev/PW1 regarding the reason behind the strained relationship. That is not all. According to Suchitra/PW2 the strained relationship was due to the family of the accused being jealous of their family as they were well placed in life. On this very aspect, Suchitra/PW2 stated that she did not know since when the accused came to know that they were Chambar by caste. She also initially stated that the accused did not know about the same. It was clearly suggested to her that the accused always knew that they were Chambars by caste and she stated that she could not say anything to the said suggestion.

Considering the conflicting versions given by Mahadev/PW1 and his wife Suchitra/PW2 as the reason behind their strained relationship that their relations were strained because the accused had come to know that they belonged to Chambar caste, the plea of the accused appears to be probable in that the relationship between both the families were strained because of non payment of the commission which Shrikant/A-1 was demanding on account of the sale of the house through him. The evidence of Mahadev/PW1 shows that he had purchased an old house at Panzorconi, Cuncolim, four years prior to the incident and it is the case of the accused, as suggested to Mahadev/PW1 as well as taken in the 313 statement of both the accused that Mahadev/PW1 owed money to Shrikant/A-1 and because he was demanding the same they were falsely implicated in the case.

7. The second aspect is regarding the involvement of Surekha/A-2. As per Suchitra/PW2, Surekha/A-2 was present along with Shrikant/A1- and was singing songs along with Surekha/A-2. She stated that the accused Surekha/A-2 was repeating what Shrikant/A-1 was stating. However, as per

Mahadev/PW1, Surekha/A-2 was along with Shrikant/A-1 and she was also giving bad words such as “Chamarin amchea ghari shezareak podla”. Mahadev/PW1 has not adhered to the version of Suchitra/PW2 that Surekha/A-2 was either singing songs in tune with Shrikant/A-1 or repeating as to what Shrikant/A-1 was stating. Milind/PW3 apart from stating that Surekha/A-2 was present with Shrikant/A-1 did not attribute any words having been uttered by her. Likewise, Shiuram/PW5, first, stated that Surekha/A-2 was near Shrikant/A-1 at the time of incident but he did not know what she was doing but in the next breath he stated that Surekha/A-2 also gave abuses to Suchitra/PW2 by stating something like Chambar. This is a witness who claims he was present for 30 minutes during which the entire incident lasted and yet he does not know what words or abuses were uttered by Surekha/A-2. In other words, it is very clear that Shiuram/PW5 did not know for sure whether Surekha/A-2 stated any abuses at all. The case of Sushila/PW6 is no different. She too has not attributed any words having been uttered by Surekha/A-2 at the time of incident. She was cross-examined by the prosecution. Even if her evidence could not be treated as effaced from the

record and could be relied in part, she does not implicate Surekha/A-2 at all. Considering the conflicting versions given by different witnesses as regards the role of Surekha/A-2 in the entire incident, Surekha/A-2 certainly deserved to be given benefit of doubt.

8. Reverting to the case against Shrikant/A-1, the versions given by different witnesses examined on behalf of the prosecution are far from consistent.

9. The learned Public Prosecutor submits that there is at least consistency in the versions of the prosecution witnesses that Shrikant /A-1 had abused Suchitra/PW2 with words “Cheddi, Chamarin”. On the other hand, it is submitted on behalf of the accused that there is no consistency in the versions given by the family members themselves as the words attributed by each of them to Shrikant/A-1 do not match and moreover Milind/PW3 does not support the version of his parents. As per Mahadev/PW1 he was inside his house, on the first floor, and when he heard Shrikant/A-1 talking loudly from outside his

house, he came down to see as to who was making noise and then Shrikant/A-1 started giving bad words to his wife Suchitra/PW2 saying “Chamarin fullam kadta ani dev korta” and further stated “Cheddi, dev pauchonam” and also gave bad words such as “Deva tum ghora Kumbar amchea shezar rauta Magzaonkarin Chambar” and “Jana Gana Mana adhi nayaka jayahe amchea ghari shejari raute Chambar”. He further stated that his son Milind/PW3 who was wiping the car outside the house questioned Shrikant/A-1 as to why he was giving bad words to his mother and Shrikant/A-1 then told his son “tum fodrecho Chamar, tum maka kiteak vincharta”. Here, it may be noted that this version of Mahadev/PW1 is not at all supported by Milind/PW3. According to Mahadev/PW1, Shrikant/A-1 then threw a stone which landed on the forehead of Milind/PW3 and Milind/PW3 started bleeding. He was confronted with his statement recorded to the Police and he maintained that the statement “Chamarin Dev tuka pauchona” was made by him when his statement was recorded. This omission has been proved by the prosecution through the evidence of Dy.S.P. Gaokar/PW9. As regards the presence of Shiuram/PW5 and

Sushila/PW6, Mahadev/PW1 stated that they arrived at the spot when the accused threw the stone on his son but in the next breath he stated that both of them were present even prior to the throwing of the stone on his son. Suchitra/PW2 makes no reference to the presence of Shiuram/PW5 or Sushila/PW6 when the incident started but she refers to Shiuram/PW5 as a person who had come to empty the dust bin. Admittedly, the said Shiuram/PW5 is their tenant and must have been residing on the ground floor of their house. As per Suchitra/PW2 at about 7.30 a.m. on 13-4-2003 she was taking out flowers from her garden when the accused(presumably Shrikant/A-1) started abusing her stating “Chamarin, Chedi fulam kadta, Dev korta” and started singing songs which were as follows: “Vitola tum ghora kumbar amchea mukar ravta Mazgaonkar Chambar. Jana Gana Mana Adi Nayaka jap manta Chambarin” and at this time her neighbour Shiuram/PW5 had come to empty the dust bin. She further stated that the distance between her house and the compound of the accused was about 6 meters and when her son asked the accused no.1 about the abuses, accused no.1 stated to him “tum chambar mure fodreacho” and then threw a stone on her son

Milind and the said stone was thrown by Shrikant/A-1 by standing in his compound which hit the forehead of her son and who suffered a bleeding injury.

10. If, as per Mahadev/PW1, the song, if I may use that expression, began with the word “Deva” as per Suchitra/PW2 and Milind/PW3 it began with the word “Vitola”. Did they hear it right? As per Suchitra/PW2 the distance between their house and that from the compound of the house of the accused is 6 meters but this statement does not appear to be correct at all because the compounds of both the houses are separated by a 8 meters wide road and the witnesses are totally silent on the aspect as to what distance the accused were standing in their compound from the house of Suchitra/PW2 and her family. As per Shiuram/PW5, Shrikant/A-1 abused Suchitra/PW2 by uttering the words “Chedi, Chamarain Dev korta” and according to him besides the said words no other expressions were used by the accused while abusing the complainant. In other words, Shiuram/PW5 who is a tenant of the family members of Suchitra/PW2 does not support the versions given by Suchitra/PW2, her husband Mahadev/PW1

or her son Milind/PW3. This has to be looked into from the background of the fact that the relations between both the familes were strained and which according to the accused because the latter was demanding his commission from the sale of the house purchased by Mahadev/PW1. Sushila/PW6 though cross-examined by the prosecution stated in the cross-examination that Suchitra/PW2 was called by Shrikant/A-1 “Chedi” and “Chamarin” and she too does not entirely support either the version given by Shiuram/PW5 or the other family members of Suchitra/PW2 and this apart from the fact that there are also contradictions found in the evidence of Mahadev/PW1 in relation to the statement earlier given by him to the Police.

11. Considering the strained relationship between both the families and in the absence of sufficient corroboration from independent sources the version of Suchitra/PW2 could not be accepted as free from doubt. There was no other option before the learned Special Judge but to give benefit of doubt to the accused.

12. Therefore, I find there is no merit in this appeal and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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